



Sherry L. Robinson

Criminal District Attorney
Waller County

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SEP 02 1997

Opinion Committee

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R Q Q 3

August 28, 1997

Mr. Dan Morales
Attn: Ms. Sarah Shirley
Opinion Committee Chairperson
Office of the Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

FILE # 1139754-97
I.D. # 39754

Dear Ms. Shirley,

On behalf of the Brookshire-Katy Drainage District, I am requesting a written legal opinion on the current status of §53.063 regarding supervisors' qualifications for the Fresh Water Supply Districts. I have attached a copy of the letter from the Superintendent of the Brookshire-Katy Drainage District requesting our office to obtain an Attorney General Opinion.

The letter from the Superintendent includes the various sections from the District's Enabling Act and the Water Code that seem to be in conflict. The District is seeking an interpretation that would prevent any hinderance in the upcoming election.

Thank you for your time and assistance in this matter. Please feel free to contact me if I can provide any assistance or additional information.

Sincerely,

Claudia T. Bridges
Assistant Criminal District Attorney

David Barron
Asst. District Attorney

Claudia T. Bridges
Asst. District Attorney

Chad Bridges
Asst. District Attorney



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Brookshire - Katy Drainage District

P.O. BOX 608
BROOKSHIRE, TEXAS 77423

August 22, 1997

District Attorney Sherry Robinson
Waller County Courthouse
836 Austin
Hempstead, Texas 77445

Dear Sherry:

Recent revisions in the Water Code by the 74th and 75th Legislatures have created unforeseen problems for a number of agencies operating under the chapters of the Water Code. The 74th Legislature in 1995 repealed numerous administrative provisions in each one of the chapters and created new Chapter 49 and Chapter 59 to handle those provisions. In creating those two chapters, the Legislature created more problems than they solved.

The 75th Legislature of 1997 made an attempt to correct some of the ills of the 74th Legislature. A lot of the ills were corrected, but there are several areas that need to be addressed and that is why I am writing to your office.

Texas Government Annotated Code, Chapter 402.042 (Vernon 1990) the section outlining who may and may not request an opinion from the Attorney General's office states, in part, that the District Attorney and County Attorney are among those qualified to ask for an AG opinion. The Brookshire-Katy Drainage District according to statute can not request an opinion.

The Drainage District's Enabling Act, Chapter 203, HB 302, sets as one of the requirements of qualification to hold the office of Supervisor, that the Supervisor own land subject to taxation in the District, be 21 years of age, and be a resident of the area that he represents. Chapter 53.063 of the Water Code, which is the chapter governing Fresh Water Supply Districts by dictate of our Enabling Act, sets out the same qualifications. In the early 70's the Federal Government required the voting age be lowered to 18. If my memory serves me right, the Supreme Court ruled that the requirement of ownership of land as a condition for holding office was unconstitutional. However, I can not substantiate that statement.

WALLER CO. DISTRICT ATTORNEY

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In researching this question of qualifications, the pocket part of the Water Code revisions, Volume II for the 95-96 years covers laws up to and through the 74th Legislature. Section 53.0631 was repealed by Acts of the 71st Legislature, Chapter 328, Volume 12, September, 1989. In going back through prior pockets, I can not find where an .0631 was created, which leads me to believe that Section 53.0631 is a typographical error, and they intended for Section 53.063 to be repealed.

Of great importance to the District's Board of Supervisors, is number one: Is that qualification still good law?, and secondly: Is it unconstitutional to require an office holder to be an owner of land? This is of great urgency in that we have an election in January that has realigned the terms of office and election dates as required by Chapter 49.

Therefore, we respectfully request that your office seek an AG opinion so that we might settle this question. We can ill afford a contested election with expensive litigation. Enclosed is a copy of the Enabling Act, Section 53.063, and Section 53.0631 (repealed) for your reference material.

Thank you for your time and consideration in this matter.

Respectfully,


George Cardiff
Superintendent

GC/sw

Encl.

cility. The exercise of the power of eminent domain shall not extend beyond the boundaries of the authority, as defined herein.

Sec. 3. The management and control of the District is hereby vested in a Board of five (5) Supervisors which shall have all of the powers and authority and duties conferred and imposed upon boards of supervisors of fresh water supply districts organized under the provisions of Chapter 4 of Title 128, Revised Civil Statutes of Texas, 1925, together with all amendments thereof and additions thereto. The members of the first Board of Supervisors shall be Arthur Robichaux, O. M. Pederson, Jr., Cecil M. Beckendorff, Joe K. Moore and William H. Moore. Said members shall become Supervisors immediately after this Act becomes effective, and said first Board of Supervisors shall meet and organize as soon as is practical after the effective date of this Act, and shall within such time file their official bonds. If any of the aforementioned members of said first Board of Supervisors shall die, become incapacitated, or otherwise not qualify to assume their duties under this Act, the remaining members of the Board of Supervisors shall fill such vacancy by appointment and as provided by General Law for fresh water supply districts. Prior to the second Tuesday in January, 1962, the Board of Supervisors shall divide said District into five (5) areas, numbered one (1) to five (5), both inclusive, and assign one of their number to be the Supervisor for each said area. On said second Tuesday in January, 1962, the Board of Supervisors shall hold an election for the purpose of electing to the Board of Supervisors, a Supervisor for two (2) of said areas, which shall be designated by the Board of Supervisors after having been determined by lot. Each of said Supervisors shall be elected to a two-year term of office to commence the day following the date of his election. On the second Tuesday of January, 1963, a Supervisor to serve a two-year term of office commencing the day following his election shall be elected to the Board of Supervisors for each of the remaining three (3) areas and thereafter annual elections on the second Tuesday of each succeeding year shall be held in the same sequence and for the same term of office. Each candidate for Supervisor shall be designated on the official ballot according to the number of area in which he resides, and at Supervisors' elections each qualified voter in the District shall be entitled to vote on candidates from all five (5) areas. The candidate in each area respectively receiving the highest number of votes for Supervisor of such respective area shall be elected. Each such candidate must be more than twenty-one (21) years of age, must own land subject to taxation in said District and must be a resident of the area from which he seeks election. Except as herein provided, the Board of Supervisors shall be selected as provided by General Law for fresh water supply districts, and in accordance with Article 7897, Revised Civil Statutes of Texas, 1925.

Sec. 4. The Assessor and Collector of taxes of Waller County shall, ex officio, be the Assessor and Collector of taxes for the District. The blanks used by the Assessor and Collector to accept rendition of property for taxation by the County shall be printed so as to show that the rendition of property situated in the District is also made for the benefit of the District. The property which is situated in the District shall be clearly indicated on the approved tax rolls in the office of the Assessor and Collector. The value of property situated in the District as equalized by the Board of Equalization of Waller County, finally approved by the Commissioners Court of Waller County and as extended on the approved tax rolls of Waller County shall constitute the assessed values of such property for purposes of District taxation. Within five (5) days after the approval of the report of the Board of Equalization by the Commissioners Court of the County, the Assessor and Collector of taxes shall certify to

Ch. 53 FRESH WATER SUPPLY DISTRICTS § 53.063

§ 53.043. Powers of New District

A district created by the division of an existing district into two districts has all the powers and duties given by this chapter to any other district.

Historical Note

Prior Law:

Acts 1955, 54th Leg., p. 551, ch. 174, § 5.
Vernon's Ann.Civ.St. art. 7930—5, § 5.

[Sections 53.044 to 53.060 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 53.061. Creation of District

A commissioners court may create one or more fresh water supply districts in its county by following the procedure prescribed in Sections 53.011–53.029 of this code.

Historical Note

Prior Law:

Acts 1919, 36th Leg., 2nd C.S., p. 107, ch. 48, § 1.
Vernon's Ann.Civ.St. art. 7881.

Library References

Waters and Water Courses § 183½. C.J.S. Waters § 242.

§ 53.062. Board of Supervisors

A district created under this chapter is governed by a board of five elected supervisors. Specific provisions for the election of supervisors are found in Section 53.021 (creation election) and Section 53.086 (biennial general election) of this code.

Notes of Decisions

1. In general

District attorney could institute suit against supervisors of fresh-water supply district to preserve public interest. State v. Stickle (Civ.App.1929) 11 S.W.2d 837.

§ 53.063. Supervisor's Qualifications

To be qualified for election as a supervisor, a person must be:

- (1) a resident of the district;
- (2) an owner of land in the district; and
- (3) 21 years old or older at the time of his election.

§ 53.062

GENERAL LAW DISTRICT
Title 4

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 53.062. Board of Supervisors

A district created under this chapter is governed by a board of five elected supervisors. Amended by Acts 1981, 67th Leg., p. 2665, ch. 720, § 2, eff. Aug. 31, 1981; Acts 1995, 74th Leg., ch. 715, § 13, eff. Sept. 1, 1995.

Historical and Statutory Notes

1981 Amendment. Substituted a comma for "(creation election) and" and substituted "and Section 53.0861" for "(biennial general election)".

1995 Legislation

The 1995 amendment deleted the last sentence, which formerly read "Specific provisions for the

election of supervisors are found in Section 53.021, Section 53.086, and Section 53.0861 of this code.

§ 53.0631. Repealed by Acts 1989, 71st Leg., ch. 328, § 12, eff. Sept. 1, 1989

Historical and Statutory Notes

The repealed section, derived from Acts 1973, 63rd Leg., p. 1750, ch. 635, § 3 and Acts 1975, 64th Leg., p. 602, ch. 248, § 3, related to disqualification of members of the board.

See, now, § 50.026.

§§ 53.064, 53.065. Repealed by Acts 1995, 74th Leg., ch. 715, § 42, eff. Sept. 1, 1995

Historical and Statutory Notes

Prior to repeal, § 53.064 was amended by Acts 1981, 67th Leg., p. 2665, ch. 720, § 1 and Acts 1983, 68th Leg., p. 5212, ch. 951, § 4.

Sections 2 and 3 of Acts 1995, 74th Leg., ch. 715, repealing these sections, enact V.T.C.A., Water Code Chapters 49 and 59.

§ 53.066. Repealed by Acts 1989, 71st Leg., ch. 1248, § 85(6), eff. Sept. 1, 1989

Historical and Statutory Notes

See, now, § 50.029.

§§ 53.067 to 53.070. Repealed by Acts 1995, 74th Leg., ch. 715, § 42, eff. Sept. 1, 1995

Historical and Statutory Notes

Prior to repeal, § 53.070 was amended by Acts 1983, 68th Leg., p. 643, ch. 144, § 2.

Sections 2 and 3 of Acts 1995, 74th Leg., ch. 715, repealing these sections, enact V.T.C.A., Water Code Chapters 49 and 59.

§ 53.0721. Repealed by Acts 1995, 74th Leg., ch. 715, § 42, eff. Sept. 1, 1995

Historical and Statutory Notes

Sections 2 and 3 of Acts 1995, 74th Leg., ch. 715, repealing this section, enact V.T.C.A., Water Code Chapters 49 and 59.

The repealed section, which related to the disqualification of a person to serve as an assessor or collector, was derived from Acts 1973, 63rd Leg., p. 1537, ch. 558, § 3 and Acts 1991, 72nd Leg., ch. 561, § 52.

Section 53.0721 was amended by Acts 1995, 74th Leg., ch. 76, § 5.95(27). However, § 1.02(b) of Acts 1995, 74th Leg., ch. 76 provides:

"If any provision of this Act conflicts with a statute enacted by the 74th Legislature, Regular Session, 1995, the statute controls."

GENERAL LAW DISTRICTS
Title 4

§ 53.074. Repealed by Acts 1979, 1982

Historic

Section 1 of Acts 1979, 66th Leg., ch. 8 repealing this section, enacted the Proper Code, constituting Title 1 of the Tax Code.

§ 53.075. Assessor and Collector
The board shall fix the salary of the Assessor and Collector. Amended by Acts 1985, 69th Leg., ch. 461

Historic

1985 Amendment. Substituted "not more than \$10,000" for "\$2,400" and following "a year or less".

§§ 53.076, 53.077. Repealed by Acts 1995

Historic

Sections 2 and 3 of Acts 1995, 74th Leg., repealing these sections, enact V.T.C.A., Code Chapters 49 and 59.

§§ 53.078 to 53.083. Repealed by Acts 1995, eff. Jan. 1, 1992

Historic

Section 1 of Acts 1979, 66th Leg., ch. 8 repealing these sections, enacted the Proper Code, constituting Title 1 of the Tax Code.

§§ 53.084 to 53.087. Repealed by Acts 1995

Historic

Sections 2 and 3 of Acts 1995, 74th Leg., repealing these sections, enact V.T.C.A., Code Chapters 49 and 59.

Prior to repeal § 53.086 was amended by Acts 1973, 63rd Leg., p. 1540, ch. 558, § 3 and Acts 1981, 67th Leg., p. 2665, ch. 720, § 1.

§ 53.088. Status of the District

A district is:

- (1) a governmental agency;
- (2) a body politic and corporate;
- (3) a defined district within the Constitution.

Amended by Acts 1995, 74th Leg., ch. 715, § 42, eff. Sept. 1, 1995.